IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Appeal No.737 of 2000

Decided on: November 21, 2007

State of H.P. **…Appellant**

Versus

Raj Pal **…Respondent**

Coram

The Hon'ble Mr. Justice Surjit Singh, Judge.

Whether approved for reporting?

For the appellant : Mr. D.S. Nainta, Dy. Advocate General.

For the respondent : Mr. Alok Ranjan, Advocate.

Surjit Singh, Judge (oral)

This appeal by the State is directed against the judgment of the trial Magistrate, whereby respondent Raj Pal, who was charged with and tried for offences punishable, under Sections 353, 332 and 186 of the Indian Penal Code, on police report, has been acquitted.

2. Accusation on which the appellant was tried for the aforesaid offences were like this. On 24.8.1997, PW-1 Hem Raj, Constable, alongwith PW-8 Bishan Dass, was on duty at Kisan Bhawan, where some boys and girls were staying in connection with water sports tournament. Respondent was allegedly roaming about in the aforesaid building and hurling abuses. When checked by PW-1 Hem Raj, the respondent is alleged to have caught hold of him and slapped him on the face. He then pulled PW-1 Hem Raj by the collar of his shirt, as a result of which two buttons of his shirt were broken. Matter was reported to the police immediately. Hem Raj was got medically examined. No injury was found on his person nor was he found to have consumed liquor.

Whether reporters of the local papers may be allowed to see the judgment?

3. I have heard the learned Deputy Advocate General and perused the record. The occurrence is alleged to have been witnessed by the Chowkidar of the building, namely PW-2 Rajan and PW-3 Jamna Devi, a Water Sports Instructor. Both of them have stated that when they stepped out of their rooms on hearing the commotion, it was all quiet. They have stated that they did not see the respondent assaulting PW-1 Hem Raj.

4. Hem Raj himself stated that the incident took place in the middle storey of the building, which has three storeys, and that after his initial assault in the middle storey by the respondent, he went to the roof of the building where the respondent followed him and again assaulted him. However, the site plan Ext.PW5/B shows that the incident had taken place in the second storey of the building, that is to say, the middle storey only. PW-3 Jamna Devi says that she noticed the police people and the accused in the third storey. Again, according to PW-1 Hem Raj, the incident had taken place inside a room, but according to the site plan it had taken place in the verandah of the second storey. The testimony of PW-1 Hem Raj that the incident took place inside the room is not only contrary to what is shown in the site plan, but is also suggestive of the fact that the story about the respondent roaming about in the building and hurling abuses, is concocted. None of the witnesses, other than PW-1 Hem Raj, says that the button of this shirt got broken as a result of the incident. Similarly, nobody other than PW-1 Hem Raj testifies about the alleged slapping of Hem Raj by the respondent.

5. In view of the above discussed position, the view taken by the trial Court cannot be said to be unreasonable, muchless perverse. Hence, the appeal is dismissed.

November 21, 2007(ss) **(Surjit Singh), J**